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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,567	03/15/2004	Klaus M. Irion	02581-P0560A	9815
24126	7590	02/06/2006	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC			FLANAGAN, BEVERLY MEINDL	
986 BEDFORD STREET			ART UNIT	
STAMFORD, CT 06905-5619			PAPER NUMBER	

3739

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/800,567	<b>Applicant(s)</b> IRION, KLAUS M.	
	<b>Examiner</b> Beverly M. Flanagan	<b>Art Unit</b> 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

*Beverly M. Flanagan*  
BEVERLY M. FLANAGAN  
PRIMARY EXAMINER

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/15/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed March 15, 2004 has been made of record and the references cited therein have been considered by the examiner.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alfano et al. (U.S. Patent No. 6,240,312).

**In regard to claims 1-8, 10, 12-15, 24, 25 and 30**, Alfano et al. teach a device 11 including a transport capsule 13 made of a smooth and non-corrosive material, such as Teflon, stainless steel, silicon or gold, which are biocompatible, where the capsule 13 houses a spectroscopic system 14, a motion mechanism 15, a surgical system 17, a laser system 19, a communications system 21, a light source 23, an imaging system 25 and a power system 27, all of which are coupled to a microcomputer and controller 29 (see Figure 1 and col. 4, lines 25-50). The imaging system preferably comprises a micro-video CCD and LED light sources that are preferably three color LED diodes, where the three colors LED diodes (red, green and blue as is conventional) would emit light in a shorter wavelength than the light received by the imaging system 25 (see col.

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6, lines 12-17). Figures 2 and 3 show that, as broadly as claimed, the light emitted by the LED diodes and the light received by the imaging system 25 covers the entire solid angle seen by the capsule 13. **In regard to claim 9**, Alfano et al. teach the use of filters on the imaging and illumination system of the capsule 13 (see col. 6, lines 21-34). **In regard to claim 11**, Alfano et al. teach the use of micro flash lamps for illumination, which would emit white light (see col. 6, lines 17-21). **In regard to claims 16 and 22**, Alfano et al. teach the use of an electromagnetic coil and an ultrasound delivery system (see col. 5, lines 47-67). **In regard to claims 19-21**, inherent in the use of a surgical system 17 within the capsule 13 is the use of a luminescent marker or substance or a reservoir of therapeutic substance. **In regard to claim 23**, Alfano et al. teach an alternate embodiment where the device 153 is connected to an external computer system C' via a wire cable that delivers operation commands and electrical power (see Figure 11b and col. 7, lines 15-30). **In regard to claims 26-29**, Alfano et al. teach the use of a semiconductor diode laser system as a surgical source to ablate tissue or weld tissues together (see col. 6, lines 50-65).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (571) 272-4766. The examiner can normally be reached on Mondays, Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Beverly M. Flanagan  
Primary Examiner  
Art Unit 3739

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